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*Attorneys for Defendant Netflix, Inc.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

**IN RE ONLINE DVD RENTAL  
ANTITRUST LITIGATION**

This document relates to:

*Andrea Resnick, et al. v. Walmart.com USA LLC, et al.* (Case No. 3:09-cv-00002-PJH)

*Scott Lynch, et al. v. Walmart.com USA LLC, et al.* (Case No. 3:09-cv-00138-PJH)

*Liza Sivek v. Walmart.com USA LLC, et al.* (Case No. 3:09-cv-00156-PJH)

*Michael Orozco v. Netflix, Inc., et al.* (Case No. 3:09-cv-00297-PJH)

*Melanie Miscioscia v. Netflix, Inc. et al.* (Case No. 3:09-cv-00377-PJH)

*Michael Weiner v. Walmart.com USA LLC, et al.* (Case No. 3:09-cv-00398-PJH)

*Stan Magee v. Netflix, Inc., et al.* (Case No. 3:09-cv-01793-PJH)

Case No.: M:09-cv-02029-PJH

MDL No. 2029

Hon. Phyllis J. Hamilton

**ANSWER AND AFFIRMATIVE  
DEFENSES TO CONSOLIDATED  
AMENDED CLASS ACTION  
COMPLAINT**

**ANSWER AND AFFIRMATIVE DEFENSES  
TO CONSOLIDATED AMENDED CLASS  
ACTION COMPLAINT**

1 Defendant Netflix, Inc. (“Defendant” or “Netflix”), for its answer and affirmative  
2 defenses to the purported amended class action complaint (“Complaint”) of Plaintiffs, states as  
3 follows:

4 1. Defendant admits that Plaintiffs purport to bring a class action for damages and  
5 injunctive relief premised on claims that Defendant violated federal antitrust laws. Defendant  
6 denies the remaining allegations in paragraph 1.

7 2. Defendant denies the allegations of paragraph 2.

8 3. Defendant states that it and Walmart.com provided online DVD rental services at  
9 the beginning of 2005, but denies the allegation of an Online DVD Rental Market. Defendant  
10 states it is without knowledge or information sufficient to form a belief as to the truth of the  
11 second and third sentences of paragraph 3. Defendant admits that Reed Hastings communicated  
12 with John Fleming in January 2005, but otherwise denies the allegations of the last sentence of  
13 paragraph 3.

14 4. Defendant denies the allegations of paragraph 4.

15 5. Defendant denies the existence of a “Market Allocation Agreement.” Defendant  
16 admits that Netflix has not sold new DVDs. Defendant is without knowledge or information  
17 sufficient to form a belief as to whether Walmart.com has rented DVDs online during the  
18 unspecified time periods alluded to in the first sentence of paragraph 5. Defendant otherwise  
19 denies the remaining allegations of paragraph 5.

20 6. Defendant states that it is without knowledge or information sufficient to form a  
21 belief as to the truth of the first sentence of paragraph 6. Defendant admits that an individual  
22 named Andrea Resnick paid Netflix fees during the alleged Class Period, but otherwise states  
23 that it is without knowledge or information sufficient to form a belief as to the truth of the second  
24 sentence of paragraph 6. Defendant denies the remaining allegations of paragraph 6.

25 7. Defendant states that it is without knowledge or information sufficient to form a  
26 belief as to the truth of the first sentence of paragraph 7. Defendant admits that an individual  
27 named Bryan Eastman paid Netflix fees during the alleged Class Period, but otherwise states that  
28

1 it is without knowledge or information sufficient to form a belief as to the truth of the second  
2 sentence of paragraph 7. Defendant denies the remaining allegations of paragraph 7.

3 8. Defendant states that it is without knowledge or information sufficient to form a  
4 belief as to the truth of the first sentence of paragraph 8. Defendant admits that an individual  
5 named Amy Latham paid Netflix fees during the alleged Class Period, but otherwise states that it  
6 is without knowledge or information sufficient to form a belief as to the truth of the second  
7 sentence of paragraph 8. Defendant denies the remaining allegations of paragraph 8.

8 9. Defendant states that it is without knowledge or information sufficient to form a  
9 belief as to the truth of the first sentence of paragraph 9. Defendant admits that an individual  
10 named Stan Magee paid Netflix fees during the alleged Class Period, but otherwise states that it  
11 is without knowledge or information sufficient to form a belief as to the truth of the second  
12 sentence of paragraph 9. Defendant denies the remaining allegations of paragraph 9.

13 10. Defendant states that it is without knowledge or information sufficient to form a  
14 belief as to the truth of the first sentence of paragraph 10. Defendant admits that an individual  
15 named Melanie Miscioscia paid Netflix fees during the alleged Class Period, but otherwise states  
16 that it is without knowledge or information sufficient to form a belief as to the truth of the second  
17 sentence of paragraph 10. Defendant denies the remaining allegations of paragraph 10.

18 11. Defendant states that it is without knowledge or information sufficient to form a  
19 belief as to the truth of the first sentence of paragraph 11. Defendant admits that an individual  
20 named Michael Orozco paid Netflix fees during the alleged Class Period, but otherwise states  
21 that it is without knowledge or information sufficient to form a belief as to the truth of the second  
22 sentence of paragraph 11. Defendant denies the remaining allegations of paragraph 11.

23 12. Defendant states that it is without knowledge or information sufficient to form a  
24 belief as to the truth of the first sentence of paragraph 12. Defendant admits that an individual  
25 named Liza Sivek paid Netflix fees during the alleged Class Period, but otherwise states that it is  
26 without knowledge or information sufficient to form a belief as to the truth of the second  
27 sentence of paragraph 12. Defendant denies the remaining allegations of paragraph 12.

28

1           13. Defendant states that it is without knowledge or information sufficient to form a  
2 belief as to the truth of the first sentence of paragraph 13. Defendant admits that an individual  
3 named Michael Wiener paid Netflix fees during the alleged Class Period, but otherwise states  
4 that it is without knowledge or information sufficient to form a belief as to the truth of the second  
5 sentence of paragraph 13. Defendant denies the remaining allegations of paragraph 13.

6           14. Defendant admits that Netflix, Inc. is a Delaware corporation, and that its stock is  
7 traded on the NASDAQ. Defendant admits that in 2008, as reported in the 2008 10-K and  
8 elsewhere, its revenue was in excess of \$1 billion dollars. Defendant admits that it is involved in  
9 interstate commerce. Defendant admits that it rents DVDs directly to consumers through its  
10 website, www.netflix.com, for a subscription fee. Defendant denies all remaining allegations of  
11 paragraph 14.

12           15. Defendant denies the existence of a Market Allocation Agreement referred to in  
13 the last sentence of paragraph 15. Defendant admits that Walmart.com provided an online DVD  
14 rental service. Defendant otherwise states that it is without knowledge or information sufficient  
15 to form a belief as to the truth of paragraph 15.

16           16. Defendant states that it is without knowledge or information sufficient to form a  
17 belief as to the truth of paragraph 16.

18           17. Defendant denies the existence of a conspiracy. Defendant otherwise states that it  
19 is without knowledge or information sufficient to form a belief as to the truth of paragraph 17.

20           18. Defendant states that it is without knowledge or information sufficient to form a  
21 belief as to the truth of paragraph 18.

22           19. Defendant denies the existence of a conspiracy or Market Allocation Agreement.  
23 Defendant otherwise states that it is without knowledge or information sufficient to form a belief  
24 as to the truth of paragraph 19.

25           20. Defendant denies the existence of a conspiracy or Market Allocation Agreement.  
26 Defendant otherwise states that it is without knowledge or information sufficient to form a belief  
27 as to the truth of paragraph 20.

1           21. Defendant denies the existence of a Market Allocation Agreement. Defendant  
2 otherwise states that it is without knowledge or information sufficient to form a belief as to the  
3 truth of paragraph 21.

4           22. Defendant admits that Plaintiffs purport to view the actions of directors, members,  
5 partners, officers, employees, affiliates or agents, while engaged in the management, direction,  
6 control or conduct of the corporation's or entity's business and acting within the scope of their  
7 authority, as an action by the corporation or entity.

8           23. Defendant admits that Plaintiffs seek to invoke the jurisdiction of the United  
9 States District Court pursuant to 28 U.S.C. §§ 1331, 1332(d) and 1337 and 15 U.S.C. §§ 1-2, 15  
10 and 26.

11           24. Defendant admits that Netflix transacts business in the State of California and that  
12 Plaintiffs seek to establish venue in the United States District Court for the Northern District of  
13 California pursuant to 28 U.S.C. §§ 15, 22 and 26 and pursuant to 28 U.S.C. § 1391(b), (c) and  
14 (d). Defendant denies the allegations in (b) and (c) of paragraph 24.

15           25. Defendant admits that Plaintiffs purport to establish personal jurisdiction in the  
16 United States District Court for the Northern District of California. Defendant admits that  
17 Netflix has transacted business in the State of California. Defendant denies the remaining  
18 allegations of paragraph 25.

19           26. Defendant admits that Netflix is involved in interstate commerce and uses various  
20 instrumentalities of interstate commerce, including interstate wires and the United States postal  
21 system. Defendant denies the remaining allegations of paragraph 26.

22           27. Defendant admits that until May 2005, Walmart.com engaged in a subscription-  
23 based online DVD rental business. Defendant admits that Netflix has engaged and continues to  
24 engage in a subscription-based online DVD rental business. Defendant otherwise denies the  
25 allegations of paragraph 27.

26           28. Defendant denies the allegations of paragraph 28.

27           29. Defendant denies the allegations of paragraph 29.

28           30. Defendant denies the allegations of paragraph 30.

1           31. Defendant admits that Plaintiffs purport to define DVD as Digital Video Disc or  
2 Blu-ray Disc containing commercially recorded entertainment programs for personal viewing.  
3 Defendant admits that Plaintiffs purport to exclude blank Digital Video Discs from their  
4 definition. Defendant states that it is without knowledge or information sufficient to form a  
5 belief as to the truth of the second, third and fourth sentences of paragraph 31.

6           32. Defendant denies the allegations of paragraph 32.

7           33. Defendant admits that Netflix subscribers may rent DVDs for a monthly fee.  
8 Defendant admits that Netflix plans charge a subscription fee. Plaintiffs have not identified with  
9 particularity the source of statements attributed to Reed Hastings in the third sentence of  
10 paragraph 33. Defendant has been unable to verify whether the quoted material is accurate.  
11 Defendant, therefore, states that it is without knowledge or information sufficient to form a belief  
12 as to the truth of the quoted material in the third sentence of paragraph 33. Defendant admits  
13 that Netflix customers fill out a rental queue in order of rental preference, and that DVDs are sent  
14 to the address designated by the customer through the United States postal system. Defendant  
15 admits that when paying customers in good standing return their DVDs via prepaid envelope  
16 provided with the rental, Netflix then mails the next available DVD in their queue. Defendant  
17 otherwise denies the allegations of paragraph 33.

18           34. Defendant denies the allegations in the first sentence of paragraph 34. Defendant  
19 states that it is without knowledge or information sufficient to form a belief as to the truth of the  
20 remaining allegations in paragraph 34.

21           35. Defendant denies the allegations in the first sentence of paragraph 35.

22           A. Defendant denies the allegations in the first sentence of part A of  
23 paragraph 35. Defendant admits that Netflix rentals are priced on a monthly subscription  
24 basis. Defendant states that it is without knowledge or information sufficient to form a  
25 belief as to the allegations in the fourth, fifth, sixth and seventh sentences of part A of  
26 paragraph 35. Defendant admits that Netflix offers movie reviews and customer-specific  
27 recommendations. Defendant denies all remaining allegations in part A of paragraph 35.  
28

1           B.       Defendant admits that Netflix subscribers cannot pick up or drop off their  
2 DVD rentals at a designated retail store. Defendant admits that a valid United States  
3 postal address is required to be a Netflix subscriber. Defendant admits that Netflix is a  
4 subscription-based service. Defendant admits that Netflix has over 100,000 titles.  
5 Defendant denies all remaining allegations in part B of paragraph 35.

6           C.       Defendant denies the allegations of the first and second sentences of part  
7 C of paragraph 35. Plaintiffs have not identified with particularity the source of  
8 statements attributed to Steve Swasey in part C of paragraph 35. Defendant has been  
9 unable to verify whether the quoted material is accurate. Defendant, therefore, states that  
10 it is without knowledge or information sufficient to form a belief as to the truth of the  
11 quoted material in part C of paragraph 35. Defendant denies all remaining allegations of  
12 paragraph 35.

13       36.       Defendant denies the allegations of the first sentence of paragraph 36. Plaintiffs  
14 have not identified with particularity the source of statements attributed to Reed Hastings in the  
15 second and third sentences of paragraph 36. Defendant has been unable to verify whether the  
16 quoted material is accurate. Defendant, therefore, states that it is without knowledge or  
17 information sufficient to form a belief as to the truth of the quoted material in paragraph 36.

18       37.       Defendant refers to the April 24, 2009 conference call for a complete and accurate  
19 statement of its contents, and otherwise denies the remaining allegations of paragraph 37.

20       38.       Defendant admits that it charges its subscribers monthly subscription fees  
21 regardless of the DVDs that are rented. Defendant otherwise denies the allegations of paragraph  
22 38.

23       39.       Defendant denies the allegations of paragraph 39.

24       40.       Defendant denies the allegations of paragraph 40.

25       41.       Defendant denies the allegations of paragraph 41.

26       42.       Plaintiffs have not identified with particularity the source of statements attributed  
27 to Reed Hastings in the quoted passages in paragraph 42. Defendant has been unable to verify  
28 whether the quoted material is accurate. Defendant, therefore, states that it is without knowledge

1 or information sufficient to form a belief as to the truth of the quoted material in paragraph 42.  
2 Defendant otherwise denies the remaining allegations in paragraph 42.

3 43. Plaintiffs have not identified with particularity the source of statements attributed  
4 to Reed Hastings in the third sentence of paragraph 43. Defendant has been unable to verify  
5 whether the quoted material is accurate. Defendant, therefore, states that it is without knowledge  
6 or information sufficient to form a belief as to the truth of the quoted material in the third  
7 sentence of paragraph 43. Defendant states that it is without knowledge or information sufficient  
8 to form a belief as to the truth of the third sentence of paragraph 43. Defendant denies that  
9 combined revenue for 2005 through 2008 was in excess of \$5 billion dollars and that gross profit  
10 margin was 40%, and refers to its filings with the Securities and Exchange Commission.  
11 Defendant denies the remaining allegations of paragraph 43.

12 44. Defendant denies the allegations of paragraph 44.

13 45. Defendant denies the allegations of paragraph 45.

14 46. Defendant admits that in or around June of 2004, one of its subscription plans was  
15 \$21.99 a month. Defendant admits that in or around November of 2004, one of its subscription  
16 plans was \$17.99 a month. Defendant states that it is without knowledge or information  
17 sufficient to form a belief as to the truth of the second, third, and fifth sentences of paragraph 46.  
18 Defendant denies the remaining allegations of paragraph 46.

19 47. Defendant states that it is without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations of paragraph 47.

21 48. Defendant states that it is without knowledge or information sufficient to form a  
22 belief as to the truth of the allegations of paragraph 48.

23 49. Defendant states that it is without knowledge or information sufficient to form a  
24 belief as to the truth of the allegations of paragraph 49.

25 50. Defendant states that it is without knowledge or information sufficient to form a  
26 belief as to the truth of the first sentence of paragraph 50 insofar as it refers to the prices of Wal-  
27 Mart DVD Rentals. Defendant otherwise denies the allegations in the first sentence of paragraph  
28 50. Defendant denies the allegations of the second and third sentences of paragraph 50.



1 Plaintiffs have not identified with particularity the source of statements attributed to an unnamed  
2 industry publication in the fourth and fifth sentences of paragraph 50. Defendant has been  
3 unable to verify whether the quoted material is accurate. Defendant, therefore, states that it is  
4 without knowledge or information sufficient to form a belief as to the truth of the quoted material  
5 in the fourth and fifth sentences of paragraph 50. Defendant denies the remaining allegations of  
6 paragraph 50.

7 51. Defendant denies the allegations of the first sentence of paragraph 51. Plaintiffs  
8 have not identified with particularity the source of statements attributed to Reed Hastings in the  
9 second sentence of paragraph 51. Defendant has been unable to verify whether the quoted  
10 material is accurate. Defendant, therefore, states that it is without knowledge or information  
11 sufficient to form a belief as to the truth of the quoted material in the second sentence of  
12 paragraph 51. Defendant denies the existence of a Market Allocation Agreement. Defendant  
13 admits that Reed Hastings communicated with John Fleming in January 2005, but otherwise  
14 denies the remaining allegations of paragraph 51.

15 52. Defendant refers to the transcript of the referenced conference call for a complete  
16 and accurate statement of its contents. Defendant denies the remaining allegations of paragraph  
17 52.

18 53. Defendant refers to the referenced press release for a complete and accurate  
19 statement of its contents. Defendant denies all remaining allegations of paragraph 53.

20 54. Defendant admits that the articles listed exist and refers to the complete contents  
21 thereof. Defendant denies the remaining allegations of paragraph 54.

22 55. Defendant denies the existence of an Online DVD Rental Market. Defendant  
23 denies the existence of a Market Allocation Agreement. Defendant admits that it has not sold  
24 new DVDs. Defendant states that it is without knowledge or information sufficient to form a  
25 belief as to the truth of the other allegations of paragraph 55.

26 56. Plaintiffs have not identified with particularity the source of statements attributed  
27 to Reed Hastings in paragraph 56. Defendant has been unable to verify whether the quoted  
28 material is accurate. Defendant, therefore, states that it is without knowledge or information

1 sufficient to form a belief as to the truth of the quoted material attributed to Reed Hastings in  
2 paragraph 56. Plaintiffs have not identified with particularity the source of statements attributed  
3 to an unnamed publication in paragraph 56. Defendant has been unable to verify whether the  
4 quoted material is accurate. Defendant, therefore, states that it is without knowledge or  
5 information sufficient to form a belief as to the truth of the quoted material in paragraph 56.  
6 Defendant refers to the transcript of the conference call referenced in the last sentence of  
7 paragraph 56 for a complete and accurate statement of its contents. Defendant denies all  
8 remaining allegations of paragraph 56.

9         57. Defendant states that it is without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations in the second and third sentences of paragraph 57, except  
11 that it denies the existence of a Market Allocation Agreement and denies the existence of an  
12 online rental market. Defendant denies all remaining allegations of paragraph 57.

13         58. Defendant states that it is without knowledge or information sufficient to form a  
14 belief as to the truth of the allegations in the fourth, fifth, sixth, seventh, eighth and ninth  
15 sentences of paragraph 58, except that it denies the existence of an Online DVD Rental Market  
16 and denies the existence of a Market Allocation Agreement. Defendant denies all remaining  
17 allegations of paragraph 58.

18         59. Defendant denies the allegations of paragraph 59.

19         60. Plaintiffs have not identified with particularity the source of statements attributed  
20 to an unnamed publication in paragraph 60. Defendant has been unable to verify whether the  
21 quoted material is accurate. Defendant, therefore, states that it is without knowledge or  
22 information sufficient to form a belief as to the truth of the quoted material in paragraph 60.  
23 Defendant denies all remaining allegations of paragraph 60.

24         61. Defendant denies the allegations of paragraph 61.

25         62. Defendant denies the allegations of paragraph 62.

26         63. Defendant denies the allegations of paragraph 63.

27         64. Defendant admits that Plaintiffs purport to bring a class action under Rules 23(a),  
28 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure and on behalf of the individuals

1 described in paragraph 64. Defendant otherwise denies the remaining allegations of paragraph  
2 64.

3 65. Defendant denies the allegations of paragraph 65.

4 66. Defendant states that paragraph 66 calls for a legal conclusion and does not  
5 require a response. Defendant otherwise denies the allegations of paragraph 66.

6 67. Defendant states that paragraph 67 calls for a legal conclusion and does not  
7 require a response. Defendant otherwise denies the allegations of paragraph 67.

8 68. Defendant states that paragraph 68 calls for a legal conclusion and does not  
9 require a response. Defendant otherwise denies the allegations of paragraph 68.

10 69. Defendant states that paragraph 69 calls for a legal conclusion and does not  
11 require a response. Defendant otherwise denies the allegations of paragraph 69.

12 70. Defendant states that paragraph 70 calls for a legal conclusion and does not  
13 require a response. Defendant otherwise denies the allegations of paragraph 70.

14 71. Defendant states that paragraph 71 calls for a legal conclusion and does not  
15 require a response. Defendant otherwise denies the allegations of paragraph 71.

16 72. Defendant admits that individuals with the names of alleged Plaintiffs referenced  
17 in paragraphs 6-13 respectively, paid one or more monthly subscription fee to Netflix.  
18 Defendant otherwise denies the allegations of paragraph 72.

19 73. Defendant denies the allegations of paragraph 73.

20 74. Defendant incorporates by reference its responses to paragraphs 1 through 73 of  
21 the Complaint in its response to paragraph 74.

22 75. Defendant denies the allegations of paragraph 75.

23 76. Defendant denies the allegations of paragraph 76.

24 77. Defendant denies the allegations of paragraph 77.

25 78. Defendant denies the allegations of paragraph 78.

26 79. Defendant denies the allegations of paragraph 79.

27 80. Defendant denies the allegations of paragraph 80.

28 81. Defendant denies the allegations of paragraph 81.

82. Defendant incorporates by reference its responses to paragraphs 1 through 81 of the Complaint in its response to paragraph 82.

83. Defendant denies the allegations of paragraph 83.

84. Defendant denies the allegations of paragraph 84.

85. Defendant denies the allegations of paragraph 85.

86. Defendant incorporates by reference its responses to paragraphs 1 through 85 of the Complaint in its response to paragraph 86.

87. Defendant denies the allegations of paragraph 87.

88. Defendant denies the allegations of paragraph 88 and further denies that any Plaintiff, or any member of the purported class, collectively or individually, is entitled to any relief.

89. Defendant denies the allegations of paragraph 89.

90. Defendant incorporates by reference its responses to paragraphs 1 through 89 of the Complaint in its response to paragraph 90.

91. Defendant denies the existence of an Online DVD Rental Market. Defendant denies the existence of a Market Allocation Agreement. Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of paragraph 91. Defendant denies all remaining allegations of paragraph 91 and further denies that any Plaintiff, or any member of the purported class, collectively or individually, is entitled to any relief.

92. Defendant denies the allegations of paragraph 92.

93. Defendant denies all allegations not specifically admitted.

94. Defendant demands a trial by jury on all issues so triable.

#### **AFFIRMATIVE DEFENSES**

Without assuming any burden of proof they would not otherwise bear, Defendant also asserts the following defenses:

1 **First Affirmative Defense**

2 The Complaint, and each purported cause of action contained therein, fails to state facts  
3 sufficient to constitute a cause of action against Netflix.

4 **Second Affirmative Defense**

5 Plaintiffs cannot satisfy the requirements of Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2)  
6 or Fed. R. Civ. P. 23(b)(3).

7 **Third Affirmative Defense**

8 Plaintiffs have not sustained any cognizable injury or antitrust injury by reasons of any  
9 actions or omissions of Defendant Netflix.

10 **Fourth Affirmative Defense**

11 Plaintiffs lack standing to bring some or all of their claims.

12 **Fifth Affirmative Defense**

13 Netflix's conduct was not intended to have, did not have, and is not likely to have any  
14 adverse effect on competition in any relevant market.

15 **Sixth Affirmative Defense**

16 Plaintiffs have failed to properly allege a relevant market.

17 **Seventh Affirmative Defense**

18 Defendant lacks market power in any relevant market.

19 **Eighth Affirmative Defense**

20 Defendant's conduct had independent and legitimate business justifications for its  
21 conduct.

22 **Ninth Affirmative Defense**

23 Defendant's conduct was procompetitive.

24 **Tenth Affirmative Defense**

25 Plaintiffs' claims are barred, in whole or in part, because the damages they seek are too  
26 speculative and too remote.

**Eleventh Affirmative Defense**

Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel and unclean hands.

**Twelfth Affirmative Defense**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to mitigate their alleged damages, if any.

**Thirteenth Affirmative Defense**

Plaintiffs' claims are barred to the extent the claims or the relief sought are moot.

**Fourteenth Affirmative Defense**

Plaintiffs' claims for injunctive or equitable relief are barred, in whole or in part, because Plaintiff has an adequate remedy at law.

**Fifteenth Affirmative Defense**

The relief sought by Plaintiffs is barred, in whole or in part, because the alleged damages sought are too speculative and uncertain, and because ascertaining and allocating alleged damages would be impossible.

**Sixteenth Affirmative Defense**

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to bring some or all of their claims.

**Seventeenth Affirmative Defense**

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

**Eighteenth Affirmative Defense**

Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to comply with Netflix's Terms of Use.

Defendant reserves the right to assert other defenses as appropriate.

1 Date: July 13, 2009

Respectfully Submitted,

2  
3 WILSON SONSINI GOODRICH & ROSATI  
PROFESSIONAL CORPORATION

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13 *Attorneys for Defendant Netflix, Inc.*  
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*Attorneys for Defendant Netflix, Inc.*

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 NORTHERN DISTRICT OF CALIFORNIA**

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 ANTITRUST LITIGATION**

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 cv-01793-PJH)



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO CONSOLIDATED AMENDED CLASS ACTION COMPLAINT was served on the 13th day of July, 2009 as follows:

**Via Northern District of California CM/ECF Electronic Filing System**

All counsel of record.

/s/ Sara Ciarelli Walsh  
Sara Ciarelli Walsh